

**IN THE JUSTICE OF THE PEACE COURT OF
THE STATE OF DELAWARE, IN AND FOR NEW CASTLE COUNTY
COURT NO. 13**

PLAINTIFF

Crescent Management
c/o Samiullah Khan
2708 Kirkwood Hwy
Wilmington, De. 19808

v.

CIVIL ACTION: JP13-09-003207

DEFENDANT

Marjorie Pilla-Dinan
81-2 Harbor Drive
Claymont, De. 19703

ORDER

Trial denovo held May 4, 2008. Plaintiff present represented by Samiullah Khan, pursuant to Supreme Court Rule 57. Defendant present, pro se.

Plaintiff sued for possession of the residential unit located at 81-2 Harbor Drive, Claymont, Delaware 19703, and \$2,604.52 unpaid rent and late fees. Defendant presented an oral counterclaim for \$2,449.00 and stated she wished to retain possession. The Defendant's counterclaim was based on what she spent for hotel accommodations following a "flood" in her apartment from an upstairs unit, from September 16, 2008 through October 30, 2008. In addition, she requested reimbursement for veterinary bills due to her dog's reactions to the flood.

Crescent Management testified that Ms. Pilla-Dinan has not paid rent for the balance of January 2009 through the present. They stipulated to the flooding conditions, but stated that they made all repairs by October 3, 2008. In addition, they stated that Ms. Pilla-Dinan did not notify them that she needed temporary accommodations or that she had decided to stay in a hotel while the repairs were done.

Ms. Pilla-Dinan testified that she did ask a rental office representative for temporary use of another unit, and was told that none existed. She stated that her asthma was triggered each time she entered her unit until the end of October, so she did not re-occupy her

unit until that time. She stated that she should not have to pay for both the rental unit and a hotel for the period from September 9, 2008 (the day of the flood) through October 31, 2008 (the day she re-occupied the unit). In addition, Ms. Pilla-Dinan testified that she tried to make January 2009's payment, but her check was refused. She tried to make February's payment, but it was returned to her. She made March's payment, but Crescent Management did not cash her check, instead they held in until the original trial date, applying it to December's rent.

FINDINGS

The Court finds that Ms. Pilla-Dinan had the right to retain alternate accommodations after the flood through the end of repairs, but is not entitled to the veterinary bills as she did not meet her burden of proof as to the dog's condition. In addition, the Court finds that Crescent Management should have accepted all of Ms. Pilla-Dinan payments and credited her account accordingly.

Therefore, the Court finds the circumstances of this case to be a good faith dispute pursuant to 25 *Del C.* § 5716

§5716. Stay of proceedings by tenant; good faith dispute.

When a final judgment is rendered in favor of the plaintiff in a proceeding brought against a tenant for failure to pay rent and the default arose out of a good faith dispute, the tenant may stay all proceedings on such judgment by paying all rent due at the date of the judgment and the costs of the proceeding or by filing with the court an undertaking to the plaintiff, with such assurance as the court shall require, to the effect that defendant will pay such rent and costs within 10 days of the final judgment being rendered for the plaintiff.

At the expiration of said period, the court shall issue a warrant of possession unless satisfactory proof of payment is produce by the tenant.

As to the case-in- chief, the Court finds for the Plaintiff for \$3,086.00 representing rent owed from the balance of January 2009 through May 31, 2009.

This figure includes a credit of \$80.00 for court costs charged against Ms. Pilla-Dinan even though the Plaintiff withdrew the two previous court cases and a credit of \$90.00 for late fees charged against her when the Plaintiff should have accepted her rent payments for the three months of January, February and March of 2009.

As the counter-claim, the Court finds for the Defendant/Counterclaim Plaintiff for \$748.00, representing one month's rent.

CONCLUSION

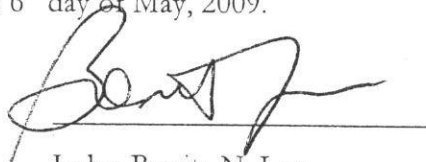
As to the case-in-chief, the Court rules for the Plaintiff for \$3,086.00 representing rent though May 31, 2009.


As to the counter-claim, the Court rules for the Defendant/Counterclaim Plaintiff for \$748.00.

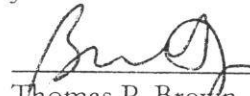
Net Judgment is for the Plaintiff in the amount of \$2,338.00 plus \$40.00 court costs and post judgment interest at 5.5%. The Court is holding Defendant's \$1,300.00 stay bond and shall release the full amount to the Plaintiff to be credited against the Net Judgment.

Pursuant to § 5716 and the finding of a good faith dispute, the Defendant must pay the balance of the net Judgment \$1,038.00, plus \$40.00 court costs, a total of \$1,078.00 to the Plaintiff within 10 calendar days of this order to retain possession of the unit. If she does not, the Plaintiff may apply to the Court for a writ of possession when the 10-day period has expired.

IT IS SO ORDERED this 6th day of May, 2009.


Judge Bonita N. Lee
Justice of the Peace


Marie E. Page
Justice of the Peace


Thomas P. Brown
Justice of the Peace

